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International Covenant on Civil and Political Rights

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Human Rights Committee

Communication No. 2006/2010

Views adopted by the Committee at its 110th session (10–28 March 2014)

Submitted by:	Youcif Almegaryaf and Hisham Matar (represented by TRIAL (Track Impunity Always))
Alleged victim:	Izzat Yousef Al-Maqrif and Jaballa Hamed Matar (the authors' fathers respectively), and the authors.
State party:	Libya
Date of communication:	10 November 2010 (initial submission)
Document reference:	Special Rapporteur's rule 97 decision, transmitted to the State party on 22 November 2010
Date of adoption of Views:	21 March 2014
Subject matter:	Enforced disappearance
Substantive issues:	Right to life, prohibition of torture and cruel and inhuman treatment, right to liberty and security of person, right of all persons deprived of their liberty to be treated with humanity and dignity, recognition as a person before the law, right to an effective remedy, and child protection
Procedural issue:	Lack of cooperation from the State party
Articles of the Covenant:	Articles 2 (para. 3), 6 (para. 1), 7, 9 (paras. 1–4), 10 (para. 1), 16 and 24 (para. 1)
Article of the Optional Protocol:	Article 5, paragraph 2 (a)

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Annex

Views of the Human Rights Committee under article 5, paragraph 4, of the Optional Protocol to the International Covenant on Civil and Political Rights (110th session)

concerning

Communication No. 2006/2010*

Submitted by:	Youcif Almegaryaf and Hisham Matar (represented by TRIAL (Track Impunity Always))
Alleged victim:	Izzat Yousef Al-Maqrif and Jaballa Hamed Matar (the authors' fathers respectively), and the authors.
State party:	Libya
Date of communication:	10 November 2010 (initial submission)

The Human Rights Committee, established under article 28 of the International Covenant on Civil and Political Rights,

Meeting on 21 March 2014,

Having concluded its consideration of communication No. 2006/2010, submitted to the Human Rights Committee by Youcif Almegaryaf and Hisham Matar under the Optional Protocol to the International Covenant on Civil and Political Rights,

Having taken into account all written information made available to it by the authors of the communication,

Adopts the following:

Views pursuant to article 5, paragraph 4, of the Optional Protocol

1. The authors of the communication, dated 10 November 2010, are Youcif Almegaryaf, a national of the United States, and Hisham Matar, a national of the United States and of the United Kingdom, who claim that their respective fathers, Izzat Youcef Al-Maqrif and Jaballa Hamed Matar, Libyan nationals born in 1952 in Benghazi, Libya, and in 1937 in Ajdabiya, Libya, respectively, are victims of violations by Libya[1] of articles 2, paragraph 3; 6, paragraph 1; 7; 9, paragraphs 1–4; 10, paragraph 1; and 16 of the Covenant. The authors also claim that they themselves are victims of a violation of articles 2,

* The following members of the Committee participated in the examination of the present communication: Mr. Yadh Ben Achour, Mr. Lazhari Bouzid, Ms. Christine Chanet, Mr. Cornelis Flinterman, Mr. Yuji Iwasawa, Mr. Walter Kälin, Ms. Zonke Zanele Majodina, Mr. Victor Manuel Rodríguez-Rescia, Mr. Fabian Omar Salvioli, Ms. Anja Seibert-Fohr, Mr. Yuval Shany, Ms. Margo Waterval and Mr. Andrei Paul Zlatescu.
In accordance with article 91 of the Committee's rules of procedure, Mr. Gerald L. Neuman and Sir Nigel Rodley, members of the Committee, did not take part in the consideration of the communication.

[1] The Optional Protocol entered into force for the Libyan Arab Jamahiriya on 16 May 1989.

paragraph 3; and 7 of the Covenant. Mr. Almegaryaf claims that he is also the victim of a violation of article 24, paragraph 1. The authors are represented by TRIAL (Track Impunity Always).

Facts as submitted by the authors

2.1 Mr. Izzat Yousef Al-Maqrif, an army officer, was arrested in 1973 after having been accused of taking part in an attempt to overthrow the government of Muammar Gaddafi. He was jailed for almost a year without being charged, after which he was released and discharged from the army. In 1981 he left Libya with his wife and settled in Rabat, Morocco, to escape Mr. Gaddafi's policy of repression against political opponents, and to join the National Front for the Salvation of Libya (NFSL). His son, Youcif Almegaryaf, was born in Rabat in 1983. In 1984, the family moved to Cairo, Egypt, where Mr. Al-Maqrif became a senior member of the Executive Committee of NFSL.

2.2 Jaballa Hamed Matar was a colonel in the Libyan army when the 1969 military coup took place. He was arrested in 1970 and released six months later. Shortly thereafter, he was appointed counsellor at the Ministry of Foreign Affairs, and joined the Libyan Mission to the United Nations in New York. During this time his son, Hisham Matar, was born. He resigned from his post in 1972 and, in 1973, returned to Tripoli, where he became a successful businessman. In 1978, during a trip to Italy, he learned that his name appeared on a list of people wanted for interrogation. In 1979, his wife and two children were able to leave Libya, and the family settled in Cairo, Egypt, where Mr. Matar became a member of the Executive Committee of the NFSL.

2.3 On 4 and 5 March 1990 Izzat Yousef Al-Maqrif and Jaballa Hamed Matar were taken from their homes in Cairo by agents of the Egyptian State Security Investigation Bureau (Mabahith Amn al-Dawla al-Ulya). They were then taken to the headquarters of the State Security Investigation Bureau in Lazoghli Square in Cairo, where they were interrogated in the presence of agents of the Egyptian General Intelligence Directorate on their activities with NFSL. They were released but their passports were confiscated without explanation.

2.4 On 12 March 1990 they were again taken from their homes by agents of the Egyptian General Intelligence Directorate to the office of the deputy head of the Directorate. They never returned home and their fate and whereabouts remain unknown.

2.5 The families believed that they were being held in Egypt, and thus several attempts were made to find out their whereabouts from the Egyptian authorities, both by relatives and NFSL members, but to no avail. According to the testimony of a friend, on 14 March 1990 he, together with other NFSL members, met with Colonel N.A. from the Egyptian General Intelligence Directorate with a view to finding out what had happened to Mr. Al-Maqrif and Mr. Matar. During that meeting Colonel N.A. claimed that the two men had been smuggled to Libya by NFSL or that they might have left Egypt as they each had more than one passport. Colonel N.A. further warned the NFSL members not to talk to the press about the case and threatened that there would be consequences for them and the members of their families who resided in Egypt if they did so. According to the NFSL Political Commissioner at the time, who was dispatched to Egypt in June 1990 with the aim of contacting the Egyptian authorities in person, he requested to meet with Colonel N.A. but the latter refused and expressed his anger that the matter had become known to the public, including human rights organizations. Similarly, Mr. Matar's wife was warned by officials of the Egyptian State Security Investigation Bureau not to continue investigating her husband's disappearance as otherwise his safety could not be guaranteed.

2.6 In 1992, the disappearances were brought to the attention of the Working Group on Enforced or Involuntary Disappearances, in relation to Egypt through a report submitted by

Amnesty International. The cases were mentioned in several annual reports of the Working Group. However the Working Group was unable to obtain clarification about the fate or whereabouts of Mr. Al-Maqrif and Mr. Matar.

2.7 In late 1993 or early 1994, a friend of Mr. Al-Maqrif's family received a smuggled letter from Mr. Al-Maqrif[2] in which he indicated that he and Mr. Matar had been transferred to Tripoli the day after their arrest in Cairo and subsequently held in Abu-Salim prison. Mr. Al-Maqrif's brother testifies to having seen the letter in late 1994, at which time he learned about the transfer of Mr. Al-Maqrif and Mr. Matar to Tripoli in March 1990.[3] In total, the family received from Mr. Al-Maqrif four smuggled letters and a series of poems, all alleged to have been written in 1993–1994. All the letters were handed to Mr. Almegaryaf only in 2009. Between late 1995 and early 1996, Mr. Matar's family and friends received three smuggled letters and one tape of a letter recorded by him.[4] These describe the men's handover from the Egyptian to the Libyan authorities on 13 March 1990, their transfer to Tripoli, and their imprisonment in Abu-Salim prison. They indicate that upon their arrest, on 12 March 1990, they were detained in separate rooms at the headquarters of the Egyptian General Intelligence Directorate and forbidden to return home. On the following day, they were taken away by agents of the Directorate in a truck with windows covered in newspaper on the inside. After a short drive the truck stopped and they were handed over to Libyan military police. They were then transported in a private Libyan jet to Tripoli, and upon arrival, taken to Abu Salim prison in Tripoli.

2.8 A former fellow inmate in Abu-Salim prison claimed that he had seen Mr. Al-Maqrif and Mr. Matar in Abu-Salim prison a few months after their handover – between 1991 and 1992 – and that they had told him about the circumstances of their transfer from Cairo to Tripoli. He claimed to have seen them for the last time on the day of the Abu-Salim prison "massacre" in June 1996 when they were taken away from their cell by prison guards. According to the authors, it is believed that about 1,200 prisoners were killed in this "massacre".

2.9. The former fellow inmate indicated that all prisoners in Abu-Salim prison were tortured, without exception. He claimed that Mr. Al-Maqrif and Mr. Matar had diabetes and suffered from high blood pressure and that access to a doctor was limited in the prison. They were initially held in solitary confinement and later shared a cell. They were not allowed to have contact with other prisoners or the outside world, including legal counsel. No one in Abu-Salim prison was allowed to submit requests or complaints, and those who did were killed. The authors further submit that Mr. Matar confirmed in one of his smuggled letters, believed to have been written in 1995, that he and Mr. Al-Maqrif shared a cell but that they were isolated and prevented from having contact wi[illegible]e other prisoners. In that letter Mr. Matar also described the cruelty practised in the pris[illegible].

2.10 The poor conditions in Abu-Salim prison have been widely documented. A report by the United Nations Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment[6] indicates that prison conditions were harsh and that the lack of adequate food, medical care and the use of torture and other forms of ill-treatment had resulted in the deaths of prisoners.

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[2] Copies of two of the letters were submitted to the Committee.

[3] The testimony of Mr. Al-Maqrif's brother was annexed to the communication.

[4] A copy of one of Mr. Matar's letters is contained on file. This letter is undated but was presumably written in 1995.

[5] A copy of the letter is contained on file.

[6] Report of 12 January 1999 by the Special Rapporteur on the question of torture, (E/CN.4/1999/61, para. 448).

2.11 In 2001 a relative of Mr. Matar who was a lawyer in Libya discovered that the name of Mr. Matar appeared in an indictment by the Prosecutor of the Armed Populace. Although he was not indicted in that specific court case, Mr. Matar was referred to as the person who had recruited the indictees to carry out insurgency activities. During the trial before the Permanent Military Court, the Defence noted that Mr. Matar was being tried in absentia, but that his statements had never been recorded or documented. The Defence therefore asked for Mr. Matar to be brought before the court. This request yielded no result. The indictees in that court case were all convicted in February 2002. According to the authors, Mr. Matar had apparently been found guilty and sentenced to death in another trial. However, it is unknown whether the sentence was carried out and there are no documents on the alleged case against him.

2.12 Hisham Matar submits that in 2008 he received information, through an informant, from a former prisoner of Abu-Salim prison that his father had been seen in 2002 at a high-security prison nicknamed "Gates of Hell" in Tripoli.

2.13 The authors submit that the circumstances under which both families fled Libya coincided with the passage of legislation prohibiting the formation of associations or political parties and punishing any form of criticism of the political system in place. The arrests and transfer to Libya coincided with the mass arrests carried out by the Libyan authorities in 1989 when the regime was cracking down on perceived dissidents.

2.14 The authors add that a policy known as "physical liquidation" of opponents was introduced in the early 1980s and endorsed at the highest levels. The policy extended to opponents living abroad, and Egypt and Libya would exchange opposition activists in that framework.

2.15 The authors and their families have unsuccessfully sought information about the fate and whereabouts of Mr. Al-Maqrif and Mr. Matar from the Libyan authorities. Among other attempts, Mr. Al-Maqrif's brother met in January–February 2007 with the then Libyan Minister of Foreign Affairs, who did not provide any information. In 2008, a relative submitted a request concerning Mr. Al-Maqrif's disappearance to the Libyan Intelligence Office in Benghazi which received no reply. Among other attempts to locate his father, on 18 January 2010 in London, Mr. Hisham Matar met with Seif El-Islam Gaddafi, who confirmed to him that his father had been kidnapped by the Egyptian authorities, handed over to the Libyan authorities and taken to Libya. However, Seif El-Islam Gaddafi denied knowing anything about his fate or whereabouts. In an exchange of letters between Amnesty International and the Libyan authorities concerning the fate and whereabouts of the two disappeared persons, the Libyan authorities denied having information about them and claimed that they lived outside Libya.

2.16 The authors contend that domestic remedies are neither available nor effective in Libya for victims of human rights violations, due to fear of reprisals against themselves and their families. In their case, this fear was also based on the fact that their fathers were high-ranking members of a prohibited opposition party. It was also based on the existence of the Charter of Honour, which acted as a deterrent to bringing claims by victims of human rights violations living in Libya, the lack of independence of the judiciary, and the prevailing atmosphere of complete impunity.

The complaint

3.1 The authors claim that their fathers were subjected to enforced disappearance after their handover to the Libyan authorities on 13 March 1990. As members of a well-known opposition group and in the context of a policy of systematic disappearances and assassinations, Mr. Al-Maqrif and Mr. Matar were placed at grave risk of suffering irreparable damage to their personal integrity and lives. By failing to conduct an ex-officio

investigation into the disappearance of their fathers, the State party has failed to comply with its obligation to prevent arbitrary deprivation of life. In addition it failed to investigate their enforced disappearance or to establish their fate and whereabouts, or to bring suspected perpetrators to justice and sanction them if convicted. The authors claim that the State has thereby violated article 6 of the Covenant separately and in conjunction with its article 2, paragraph 3.

3.2 The State party violated article 7 of the Covenant by virtue of subjecting Mr. Al-Maqrif and Mr. Matar to enforced disappearance. Moreover, their prolonged incommunicado detention, coupled with the inability to have any kind of contact with the outside world, also constitutes a violation of article 7. The authors add that the State party's failure to launch an effective investigation with a view to bringing perpetrators to justice and punish those convicted, amount to a violation of article 7 in conjunction with article 2, paragraph 3, of the Covenant.

3.3 The authors also recall that, owing to the general detention conditions in which their fathers were or are still being held, in particular the isolating nature of detention and the lack of medical attention, both articles 7 and 10, paragraph 1, have been violated. The authors recall the Committee's previous finding that the conditions of detention at Abu-Salim prison violate article 10, paragraph 1. The authors also refer to rule 22 of the Standard Minimum Rules for the Treatment of Prisoners on provision of medical care and treatment for sick prisoners and claim that the lack of access to a doctor as required by the medical conditions of their fathers amounted to a violation of articles 7 and 10, paragraph 1, of the Covenant.

3.4 The authors claim that their fathers are victims of violations of article 9. They had been abducted from foreign soil through collaboration with the Egyptian authorities, attacked, handcuffed and transferred to Abu-Salim prison in Tripoli, and thereafter held for more than 20 years in incommunicado detention – if they were still alive. This amounts to a violation of article 9, paragraph 1. With regard to article 9, paragraph 2, the authors submit that their fathers had not been informed at the time of their arrest by the Egyptian authorities, nor upon their transfer under the control of the Libyan authorities, nor at any other point of the reasons for their arrest or the charges against them. With regard to article 9, paragraph 3, the authors claim that the arrest of their fathers was never entered into the official records and that they were never brought before a judge or any other judicial officer nor given the possibility to challenge the legality of their detention. Furthermore, they claim that their unacknowledged detention for more than 20 years, together with the failure of the State party to investigate their deprivation of liberty and subsequent enforced disappearance, amount to a violation of article 9, paragraph 3, separately and in conjunction with article 2, paragraph 3. With regard to article 9, paragraph 4, the authorities deprived them of access to a legal counsel or family, thus making it impossible for them to challenge the legality of their detention in violation of this provision.

3.5 The authors further claim that their fathers' right to recognition as a person before the law was violated as a result of their enforced disappearance in violation of article 16 of the Covenant, alone and in conjunction with article 2, paragraph 3.

3.6 The authors also submit that their fathers are victims of a violation of article 2, paragraph 3. Since their deprivation of liberty had not been acknowledged they had also been deprived of the possibility to seek an effective remedy. The efforts made by their families to locate them were frustrated by the systematic denial by the Libyan authorities of their involvement in the disappearance.

3.7 The authors contend that they are themselves victims of violations of their rights under article 7 in conjunction with article 2, paragraph 3, of the Covenant, as the enforced disappearance of their fathers has marked their whole lives and caused them ongoing

feelings of uncertainty and anguish which still persist. Mr. Almegaryaf further submits that he was 6 years of age at the time his father disappeared, and that, by failing to adopt special measures for his protection as a minor, Libya has violated article 24, paragraph 1, of the Covenant. Finally, the authors claim that they have never received any compensation or measure of reparation for the damage caused over the last 20 years.

Authors' additional submission

4. On 30 September 2011, the authors informed the Committee about the discovery of a mass grave near Abu-Salim prison on 25 September 2011. The authors claimed that these human remains are believed to be those of prisoners massacred by the former Libyan regime in June 1996. In relation to this recent discovery and based on concurring evidence that their fathers were detained in Abu-Salim prison between the years 1991 and 1996, and the possibility that they died in the 1996 massacre, the authors requested a series of interim measures in order to, inter alia, preserve the site, exhume the remains and identify them.[7]

Lack of cooperation from the State party

5. On 22 November 2010, 21 December 2011, 18 April 2012, 19 June 2012 and 6 June 2013, the State party was requested to submit its observations on the admissibility and merits of the communication. The Committee notes that this information has not been received. It regrets the State party's failure to provide any information on the admissibility and/or merits of the authors' claims. It recalls that, in accordance with article 4, paragraph 2, of the Optional Protocol, the State party concerned is required to submit to the Committee written explanations or statements clarifying the matter and indicating the measures, if any, that have been taken by the State to remedy the situation. In the absence of a reply from the State party, the Committee must give due weight to those of the authors' allegations that have been properly substantiated.[8]

Issues and proceedings before the Committee

Consideration of admissibility

6.1 Before considering any claim contained in a communication, the Human Rights Committee must decide, in accordance with rule 93 of its rules of procedure, whether the communication is admissible under the Optional Protocol to the Covenant.

6.2 As required under article 5, paragraph 2 (a), of the Optional Protocol, the Committee must ascertain that the same matter is not being examined under another procedure of international investigation or settlement. The Committee notes that the case of Izzat Yousef Al-Maqrif and Jaballa Hamed Matar was submitted to the Working Group on Enforced or Involuntary Disappearances, in relation to Egypt. In addition to the fact that the case was not submitted to the Working Group in relation to Libya, the Committee recalls that extra-conventional procedures or mechanisms established by the Commission on Human Rights

[7] In the absence of more specific information, this request for interim measures was not granted by the Committee.

[8] See, inter alia, communications No. 1913/2009, *Abushaala* v. *Libya*, Views adopted on 18 March 2013, para. 6.1; No. 1751/2008, *Aboussedra* v. *Libyan Arab Jamahiriya*, Views adopted on 25 October 2010, para. 4; No. 1640/2007, *El Abani* v. *Libyan Arab Jamahiriya*, Views adopted on 26 July 2010, para. 4; No. 1776/2008, *Bashasha* v. *Libyan Arab Jamahiriya*, Views adopted on 20 October 2010, para. 4.2; No. 1422/2005, *El Hassy* v. *Libyan Arab Jamahiriya*, Views adopted on 24 October 2007, para. 4; No. 1295/2004, *El Alwani* v. *Libyan Arab Jamahiriya*, Views adopted on 11 July 2007, para. 4; No. 1208/2003, *Kurbonov* v. *Tajikistan*, Views adopted on 16 March 2006, para. 4; and No. 760/1997, *Diergaardt et al.* v. *Namibia*, Views adopted on 25 July 2000, para. 10.2.

or the Human Rights Council, and whose mandates are to examine and report publicly on human rights situations in specific countries or territories, or cases of widespread human rights violations worldwide, do not generally constitute an international procedure of investigation or settlement within the meaning of article 5, paragraph 2 (a), of the Optional Protocol.[9] Accordingly, the Committee considers that it is not precluded from examining the present case under this provision.

6.3 With regard to the exhaustion of domestic remedies, the Committee reiterates its concern that, despite five reminders addressed to the State party, no observations on the admissibility or merits of the communication have been received. In the circumstances and in the absence of a challenge by the State party to the admissibility of the communication, the Committee finds that it is not precluded from considering the communication under article 5, paragraph 2 (b), of the Optional Protocol.

6.4 The Committee considers that the authors' claims regarding the violations of the rights of Izzat Yousef Al-Maqrif and Jaballa Hamed Matar under articles 2, paragraph 3; 6, paragraph 1; 7; 9, paragraphs 1–4; 10, paragraph 1; and 16, have been sufficiently substantiated for purposes of admissibility. It therefore declares the communication admissible and proceeds to its examination on the merits.

6.5 The Committee notes the authors' claims that they are victims of a violation by Libya of their rights under article 7, in conjunction with article 2, paragraph 3, of the Covenant as a result of the enforced disappearance of their fathers. Mr. Almegaryaf also claims to be a victim of violation by Libya of his rights under article 24, paragraph 1, of the Covenant. The Committee recalls that, under article 1 of the Optional Protocol, a State party recognizes the competence of the Committee to consider communications from individuals subject to its jurisdiction who claim to be victims of a violation by that State party of any of the rights set forth in the Covenant. The Committee observes that Mr. Almegaryaf is a national of the United States of America, was born in Rabat and has never lived in Libya. Hisham Matar is a national of the United States of America and the United Kingdom and has not lived in Libya since 1979. The question which arises is, therefore, whether the obligations of the State party under the Covenant apply to the authors of the present communication. The Committee considers that it is not prevented from examining the authors' claims on their own behalf, since their fathers' enforced disappearance had a direct negative impact on their lives and caused them ongoing feelings of anguish and uncertainty, in particular for the first author, who was 6 years old at the time of his father's disappearance.

Consideration of the merits

7.1 The Human Rights Committee has considered the present communication in the light of all information made available to it, in accordance with article 5, paragraph 1, of the Optional Protocol.

7.2 The Committee takes note of the authors' unrefuted allegation that Izzat Yousef Al-Maqrif and Jaballa Hamed Matar were handed over on 13 March 1990 from the Egyptian to the Libyan authorities, transferred to Tripoli and detained in Abu-Salim prison, until last seen in that prison in June 1996. The Committee notes that the families have never received any official confirmation of their transfer to Libya or their place of detention. It also notes that the State party has provided no response to the authors' allegations regarding the enforced disappearance of their fathers. It reaffirms that the burden of proof cannot rest

[9] See, inter alia, communications No. 1781/2008, *Berzig* v. *Algeria*, Views adopted on 31 October 2011, para. 7.2; No. 1776/2008, *Bashasha* v. *Libyan Arab Jamahiriya* (see footnote 8), para. 6.2; and No. 540/1993, *Celis Laureano* v. *Peru*, Views adopted on 25 March 1996, para. 7.1.

solely on the authors of the communication, especially considering that the author and the State party do not always have equal access to evidence and that frequently the State party alone has access to the relevant information.[10] It is implicit in article 4, paragraph 2, of the Optional Protocol that the State party has the duty to investigate in good faith all allegations of violations of the Covenant made against it and its representatives and to provide the Committee with the information available to it. In cases where the authors have submitted allegations to the State party that are corroborated by credible evidence and where further clarification depends on information that is solely in the hands of the State party, the Committee may consider authors' allegations substantiated in the absence of satisfactory evidence or explanations to the contrary presented by the State party.

7.3 The Committee further takes note of the information provided to the authors by witnesses, according to which Mr. Izzat Yousef Al-Maqrif was last seen alive in June 1996 in Abu-Salim prison, while Mr. Jaballa Hamed Matar was last seen alive in a high security prison in Tripoli in 2002. The Committee also notes the letters sent by the authors' fathers from their place of detention, wherein they explain the circumstances under which they were transferred to Tripoli on 13 March 1990 after having been handed over to the Libyan authorities.

7.4 The Committee recalls that in cases of enforced disappearance, the deprivation of liberty followed by a refusal to acknowledge the deprivation of liberty, or by concealment of the fate of the disappeared person, places such person outside the protection of the law, and places his or her life at serious and constant risk, for which the State is accountable.[11] In the present case the Committee notes that the State party has produced no evidence to show that it has met its obligation to protect the lives of Izzat Yousef Al-Maqrif and Jaballa Hamed Matar. The Committee concludes that the State party has failed in its duty to protect the authors' fathers' lives, in violation of article 6, paragraph 1, of the Covenant.

7.5 As to the alleged incommunicado detention of Izzat Yousef Al-Maqrif and Jaballa Hamed Matar, the Committee recognizes the degree of suffering involved in being held indefinitely without contact with the outside world. It recalls its general comment No. 20 on article 7, which recommends that States parties should make provision against incommunicado detention. It notes that in the instant case they were taken on 13 March 1990 and their fate remains unknown to this day. In the light of the information provided to the Committee by a former fellow inmate of both alleged victims about the widespread use of torture in Abu-Salim prison; the information provided in Jaballa Hamed Matar's undated letter wherein he describes the cruelty practised in the prison; the information on the inhuman conditions at Abu-Salim prison;[12] and, in the absence of information from the State party to contradict the aforementioned information, the Committee concludes that the facts before it reveal a violation of article 7 of the Covenant with regard to Izzat Yousef Al-Maqrif and Jaballa Hamed Matar.

7.6 Regarding the alleged violation of article 9, paragraphs 1 to 4, the Committee notes the authors' information that their fathers were taken away without a warrant and without being informed of the reasons for their arrest, and that they were not brought before a judicial body through which they would have been able to challenge the lawfulness of their

[10] See communications No. 1422/2005, *El Hassy* v. *Libyan Arab Jamahiriya* (see footnote 8), para. 6.7; No. 1297/2004, *Medjnoune* v. *Algeria*, Views adopted on 14 July 2006, para. 8.3; and No. 1804/2008, *Il Khwildy* v. *Libya*, Views adopted on 1 November 2012, para. 7.2.

[11] See communication No. 1913/2009, *Abushaala* v. *Libya* (see footnote 8), para. 6.2.

[12] See E/CN.4/1999/61, para. 448 (see footnote 6).

detention. In the absence of any pertinent explanation from the State party, the Committee finds a violation of article 9 of the Covenant.[13]

7.7 As regards the authors' claims under article 10, paragraph 1, that their fathers were held incommunicado at Abu-Salim prison, in poor conditions and with a lack of medical care, the Committee reiterates that persons deprived of their liberty may not be subjected to any hardship or constraint other than that resulting from the deprivation of liberty and that they must be treated with humanity and respect for their dignity. In the absence of State party information on the treatment of the authors' fathers in Abu Salim prison and noting what has been reported on the general conditions in that prison,[14] the Committee finds a violation of article 10, paragraph 1, of the Covenant.[15]

7.8 In respect of article 16, the Committee reiterates its established jurisprudence, according to which intentionally removing a person from the protection of the law for a prolonged period of time may constitute a denial of his or her right to recognition as a person before the law if the victim was in the hands of the State authorities when last seen and if the efforts of his or her relatives to obtain access to effective remedies, including judicial remedies (art. 2, para. 3, of the Covenant), have been systematically impeded.[16] In the present case, the State party has not furnished any information about the fate or whereabouts of the disappeared persons, notwithstanding the formal and informal requests submitted to the State party by, inter alia, their relatives. The Committee finds, therefore, a violation of article 16 of the Covenant.

7.9 The authors also invoke article 2, paragraph 3, of the Covenant, which requires States parties to ensure that individuals have accessible, effective and enforceable remedies for asserting the rights enshrined in the Covenant. The Committee reiterates the importance that it accords to States parties' establishment of appropriate judicial and administrative mechanisms for addressing alleged violations of rights under domestic law. The Committee notes that in the present case, no remedy, let alone effective remedy, was available to the victims or the authors of the communication to address their human rights violations. It refers to its general comment No. 31, in which it is stated that failure by a State party to investigate allegations of violations could in and of itself give rise to a separate breach of the Covenant.[17] In the present case, the Committee notes that the families tried to locate the whereabouts of the two missing persons. Inter alia, relatives of Izzat Yousef Al-Maqrif met with the Libyan Minister of Foreign Affairs in 2007 and submitted a request to the Libyan Intelligence Office in Benghazi concerning the disappearance in 2008, and Hisham Matar met with Seif El-Islam Gaddafi in person on 18 January 2010 in London to inquire about the disappearance of his father. However, all their efforts were to no avail and the State party failed to conduct a thorough and effective investigation into the disappearances. The

[13] See communications No. 1640/2007, *El Abani* v. *Libyan Arab Jamahiriya* (see footnote 8), para. 7.6; and No. 1297/2004, *Medjnoune* v. *Algeria* (see footnote 10), para. 8.5.

[14] See E/CN.4/1999/61, para. 448 (see footnote 6).

[15] See general comment No. 21 (1992) on the prohibition of torture or cruel, inhuman or degrading treatment or punishment, para. 3, *Official Records of the General Assembly, Forty-seventh Session, Supplement No. 40* (A/47/40), annex VI, sect. B; and communications No. 1134/2002, Gorji-Dinka v. Cameroon, Views adopted on 17 March 2005, para. 5.2; and No. 1422/2005, *El Hassy* v. *Libyan Arab Jamahiriya* (see footnote 8), para. 6.4.

[16] See communications No. 1640/2007, *El Abani* v. *Libyan Arab Jamahiriya* (see footnote 8), para. 7.9; No. 1327/2004, *Grioua* v. *Algeria*, Views adopted on 10 July 2007, para. 7.8; and No. 1495/2006, *Madaoui* v. *Algeria*, Views adopted on 28 October 2008, para. 7.7.

[17] See general comment No. 31 (2004) on the nature of the general legal obligation imposed on States parties to the Covenant, *Official Records of the General Assembly, Fifty-ninth Session, Supplement No. 40*, vol. I (A/59/40 (Vol. I)), annex III.

Committee concludes that the facts before it reveal a violation of article 2, paragraph 3, read in conjunction with article 6, paragraph 1; article 7; article 9; article 10, paragraph 1; and article 16 of the Covenant.

7.10 As regards the authors themselves, the Committee notes the anguish and distress caused to the authors by their fathers' disappearance on 13 March 1990, followed by a state of uncertainty that lasted three to four years, at which time they discovered that their fathers had been transferred to Tripoli and held in Abu-Salim prison. The State party's authorities left the authors without any information for more than 20 years – a state of affairs that is still ongoing. The Committee concludes that the facts before it reveal a violation of article 7 of the Covenant read alone and in conjunction with article 2, paragraph 3, with respect to the authors. Having come to this conclusion, the Committee also finds that such suffering caused to the first author reveals a violation of article 24, paragraph 1, read in conjunction with article 7, bearing in mind that he was a minor at the time his father was abducted, and that such suffering and anguish was thus twofold.

8. The Human Rights Committee, acting under article 5, paragraph 4, of the Optional Protocol to the International Covenant on Civil and Political Rights, is of the view that the facts before it reveal a violation by the State party of articles 6, paragraph 1; 7; 9; 10, paragraph 1, 16. It also reveals a violation of article 2, paragraph 3, read in conjunction with articles 6, paragraph 1; 7; 9; 10, paragraph 1 and 16 of the Covenant with regard to Izzat Yousef Al-Maqrif and Jaballa Hamed Matar. Lastly the Committee finds a violation of article 7, read alone and in conjunction with article 2, paragraph 3, of the Covenant, with respect to the authors, as well as a violation of article 24, paragraph 1, read in conjunction with article 7 with respect to the first author.

9. In accordance with article 2, paragraph 3, of the Covenant, the State party is under an obligation to provide the authors with an effective remedy by, inter alia: (a) conducting a thorough and effective investigation into the disappearance of Izzat Yousef Al-Maqrif and Jaballa Hamed Matar; (b) providing the authors and their families with detailed information on the results of its investigation; (c) releasing Izzat Yousef Al-Maqrif and Jaballa Hamed Matar immediately, if they are still being detained incommunicado; (d) in the event that Izzat Yousef Al-Maqrif and Jaballa Hamed Matar are deceased, handing over their remains to their families; (e) prosecuting, trying and punishing those responsible for the violations committed; and (f) providing adequate compensation to the authors for the violations suffered, as well as to Izzat Yousef Al-Maqrif and Jaballa Hamed Matar, if they are still alive. The State party is also under an obligation to take steps to prevent similar violations in the future.

10. Bearing in mind that, by becoming a party to the Optional Protocol, the State party has recognized the competence of the Committee to determine whether there has been a violation of the Covenant and that, pursuant to article 2 of the Covenant, the State party has undertaken to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the Covenant and to provide an effective remedy when it has been determined that a violation has occurred, the Committee wishes to receive from the State party, within 180 days, information about the measures taken to give effect to the present Views. The State party is also requested to publish the present Views and to have them widely disseminated.

[Adopted in English, French and Spanish, the English text being the original version. Subsequently to be issued also in Arabic, Chinese and Russian as part of the Committee's annual report to the General Assembly.]